

**From:** D. C. Sessions  
**To:** Microsoft ATR  
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**Subject:** Tunney Act comments on the proposed Final Judgment

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For reasons that have been extensively covered in the Press and by other comments to the Court, I believe that the proposed Final Judgment is at best ineffective and at worst an explicit invitation to Microsoft to continue the abuse of monopoly that originally led to this case. As the Court has undoubtedly been bombarded with these observations, I will confine my comments to a point which to my knowledge has not been brought up elsewhere.

Under the definition in (VI)(U),  
"Windows Operating System Product" means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

The definition in (VI)(K) (not quoted for brevity) also depends on the definition of "Windows Operating System Product," and by (VI)(L):

"Microsoft Platform Software" means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

Others have pointed out the danger of allowing Microsoft sole discretion to replace other firms' products as part of its "Platform Software," effectively judicially-endorsed predatory pricing. My concern, though, is with the possibility that Microsoft will *\*remove\** features from their definition.

For instance, there are a large number of utilities currently included with Windows that are used to set it up, configure it, and so forth. These utilities depend on intimate knowledge of the Microsoft design and cannot be readily duplicated, yet without them the system is utterly useless. For a number of reasons (including their dependence on undocumented features) they cannot be

readily obtained from any other source. Microsoft could remove them in perfect compliance with the proposed Final Judgment.

If something like this did occur, Microsoft's customers (e.g. the computer OEMs) would have no choice but to acquire them from Microsoft under whatever terms Microsoft chose. Being outside of the scope of the proposed Final Judgment, there would be no constraints on those terms, however abusive. In effect, the entire proposed Final Judgment would be a dead letter since all of its terms depend in the end on the above definitions.

In sum, the proposed Final Judgment is not just flawed in detail, but contains a loophole which allows Microsoft to escape from all restraints. In the case of an abusive monopolist with Microsoft's record, this is patently not in the public interest.

Respectfully submitted this 24th day of January 2002,

D. C. Sessions

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| I'm old enough that I don't have to pretend to be grown up.  
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